IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. THOMAS A. BILLMAN, Appellant.	No. 38400-1-II UNPUBLISHED OPINION

Armstrong, J. — Thomas A. Billman appeals a Thurston County Superior Court order denying his motion to modify his sentence to include additional credit for time served. He argues that the court erred when it refused to find that community custody constituted confinement, deductible from his prison sentence. In his statement of additional grounds (SAG), Billman also argues that his release on bail constituted home detention, likewise deductible from his sentence. We affirm.[1]

FACTS

In August 2002, the State charged Billman with one count of first degree child rape and four counts of first degree child molestation, alleging that he had sexually abused his stepdaughter over a six-year period. Billman pleaded guilty to the single count of first degree child rape, and the State recommended a special sex offender sentencing alternative (SSOSA) sentence. The court granted the SSOSA, suspending all but six months of Billman's 102-month sentence.

In 2005, the court revoked Billman's SOSSA and imposed the remainder of his sentence,

[1] A commissioner of this court considered this matter pursuant to RAP 18.14 and referred it to a panel of judges.

allowing credit for the six months of incarceration originally imposed and other pre- and post-conviction jail time. Billman filed his motion to modify the sentence on August 28, 2008, arguing that community custody constituted confinement. The court denied the motion, and this appeal followed.

ANALYSIS

Billman contends that in RCW 9.94A.030(5), the Sentencing Reform Act identifies community custody as "confinement," and he must, therefore, be given credit on his prison sentence for the time he spent on community custody. He also argues in the alternative that the statutes are ambiguous and must be interpreted in his favor pursuant to the rule of lenity.

Whether community custody qualifies as confinement is a question of statutory interpretation, requiring de novo review. *State v. Ramirez*, 140 Wn. App. 278, 165 P.3d 61 (2007). However, we do "not construe plain and unambiguous statutes." *Ramirez*, 140 Wn. App. at 290.

RCW 9.94A.670 provides for SSOSA sentences. Subsection (11) requires that "[a]ll confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked." The SRA defines "confinement" as "either total or partial confinement." RCW 9.94A.030(8). "Total confinement" means "confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day." RCW 9.94A.030(47). Partial confinement may last no more than one year, and it is less than twenty-four hours a day. RCW 9.94A.030(32). It can occur in any of the facilities listed under total confinement; or it can occur as work release,

home detention, work crew, or a combination of work crew and home detention. RCW 9.94A.030(32). Under these definitions, community custody is clearly neither total nor partial confinement.

Billman relies on the definition in RCW 9.94A.030(5), which states, in pertinent part,

> "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed as part of a sentence under this chapter and served in the community subject to controls placed on the offender's movement and activities by the department.

Plainly, community custody is imposed in addition to, or as an alternative to confinement. As noted above, under the SSOSA provisions, it can be revoked and replaced by confinement. *See also State v. Gatrell*, 138 Wn. App. 787, 790, 158 P.3d 636 (2007).[2] A statute is ambiguous if it is susceptible to two or more *reasonable* interpretations. *State v. Van Woerden*, 93 Wn. App. 110, 116, 967 P.2d 14 (1998). The interpretation that Billman urges is not reasonable. The rule of lenity does not apply in this case.

In his SAG, Billman contends that because a condition of his release on bail required him to reside at a specific address, it constituted home detention. "Home detention" means "a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance." RCW 9.94A.030(27). The order establishing conditions of release did not require electronic surveillance. There was no detention.

[2] Billman acknowledges that *Gatrell* rejected the argument he makes here, but asks us not to follow that case. We agree with *Gatrell*'s reasoning.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Quinn-Brintnall, J.

Van Deren, C.J.